



CLIENT SERVICE AGREEMENT

This Agreement is entered into this ____ day of _____, 20____ (“Effective Date”) by and between COBRA-Care Advisors, Inc. (“CCA”) and _____ (“Client”). CCA and Client are hereinafter individually referred to as “party” or collectively as “parties.”

RECITALS

WHEREAS, CCA is in the business of providing administration services that comply with the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”) and applicable State Healthcare Continuation laws and desires to provide such services to the Client;

WHEREAS, Client is retaining CCA to administer its Federal COBRA and State Healthcare Continuation (as applicable) needs;

WHEREAS, Client acknowledges that CCA is an independent contractor for purposes of this Agreement. As such, CCA is not an agent or employee of Client and does not assume any liability or responsibility for any breach of duty or act of omission by Client;

WHEREAS, Client further acknowledges that the performance of services by the CCA does not and is not intended to make CCA the “plan administrator”, “plan sponsor”, or “other fiduciary” as defined under ERISA or other applicable law, and Client will not identify or refer to CCA or any of its affiliates as such; and

WHEREAS, Client further acknowledges and agrees that CCA will not be deemed to be providing legal or tax advice as a result of performing its duties under this Agreement.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties agree as follows:

1. **Term.** This Agreement is effective as _____ (“Effective Date”) and shall continue for a period of one (1) year (the “Initial Term”) unless sooner terminated pursuant to the provisions of Section 10 hereof. This Agreement shall be automatically renewed for an additional periods of one (1) year (each a “Renewal Term”), unless either party shall give the other party at least sixty (60) calendar days written notice of non-renewal.

2. **Services.**

2.1 CCA shall provide the following administrative services (the “Services”) for, or on behalf of, the Clients during the Initial Term and any Renewal Term:

- Prepare and send COBRA and/or State Healthcare Continuation (if applicable) General Rights notices for new hires
- Prepare and send COBRA and/or State Healthcare Continuation Election notices to qualified beneficiaries experiencing a Qualifying Event (defined below)
- Monitor election periods for qualified beneficiaries

- Prepare and send coupon books
- Monitor premium due dates, track payments made, and monitor grace periods.
- Collect premiums on behalf of the Client from qualified beneficiaries
- Remit premiums (less Premium Admin Fees) to the Client on a monthly basis
- Prepare and send HIPAA Certificates of Creditable Coverage upon initial qualifying events and upon termination
- Prepare and send any other COBRA Unavailability notices, Insufficient Payment notices, Termination notices, Conversion notices (if applicable), Plan Change and Rate Renewal notices (if applicable)
- Notify Client of qualified beneficiary enrollments and terminations

2.2 CCA shall not be responsible for reviewing any group health or other plans ("Plans") identified by the Client at any time or any obligations contained in such Plans. The Client as well as the Clients' representatives (employees, brokers, third party administrators and any and all other agents) shall be exclusively responsible for the accuracy and completeness of the information provided. The Client shall be responsible for all determinations and representations relating to the information to be certified.

2.3 **Insurance:** CCA agrees to maintain, at a minimum, professional liability insurance in the following amount, which it currently has in place, for the term of this agreement: \$1,000,000 professional liability through the Philadelphia Indemnity Insurance Company.

2.4 **Premium Collection & Remittance:** The Client authorizes CCA to receive, collect, remit, or otherwise transfer funds collected on behalf of COBRA participants as required by COBRA for purposes of reimbursing the Client for premiums or other amounts previously paid by the Client to its applicable insurance carrier(s). The Client authorizes CCA to use its best efforts to correct any underpayments caused by rate changes, COBRA participant errors, etc., and agrees to abide by CCA's Premium Collection, Remittance, and Refund Policy as it relates to COBRA participant payments (as amended from time to time) and is available upon request.

2.5 **State Insurance Law COBRA Administration Fee:** For those states that require a Third-Party Administrator (TPA) COBRA Administration fee (e.g., New York), CCA will collect this fee directly from the Client. The fee will compensate CCA, as the third-party administrator, for the following services: monitoring election periods, monitoring and calculating grace periods, monitoring payments and due dates, and notifying employers of qualified beneficiary enrollments and terminations.

3. **Client's Responsibilities.** The Client shall be responsible for performing the following activities which are necessary for CCA to fully perform its administration activities:

3.1 The Client shall notify CCA of a Qualifying Event (defined below) through the COBRA-Care Online software platform (the "Software"). The Client shall be exclusively responsible for the accuracy and completeness of the information provided to CCA, through access and use of the Software and ensure that CCA has otherwise received such information. The Client shall provide

notice to CCA within fourteen (14) days of the occurrence of any events that will result in a loss of coverage under a Plan (“Qualifying Events”). The list of qualifying events provided at www.dol.gov/COBRA shall control the Client’s obligation to provide timely notice at all times during the Initial Term and any Renewal Terms of this Agreement. The Client shall be solely responsible for determining whether or not an employee has had a Qualifying Event, including without limitation, whether the employee has been terminated for gross misconduct. The Client shall designate the date on which the loss of coverage will occur pursuant to the terms of the Client’s applicable insurance policy or policies.

3.2 The Client shall notify CCA as soon as possible, but in no event later than five (5) business days after becoming aware, that any qualified beneficiary was disabled (as defined by the Social Security Act) at the time of the Qualifying Event, has become disabled within sixty (60) days of a Qualifying Event, or having been disabled, is no longer disabled.

3.3 The Client shall notify CCA in writing not less than thirty (30) days prior to any addition, termination or modification of a Plan. For each qualified beneficiary, the Client shall determine the premium rates to be charged for COBRA continuation coverage and shall notify CCA of such premiums.

3.4 The Client shall notify CCA of any change in premium rates affecting participants or prospective participants under a Plan no later than the 1st of the Month (30 days), where possible, prior to the rate or Plan change. The Client thereby acknowledges that CCA is not a collection agency and is not expected to collect any back-premiums from COBRA participants as a result of late notification of Plan or Plan Rate changes. The Client shall notify and advise CCA of qualified beneficiaries who, at the time of a Qualifying Event, have been deemed incompetent and provide CCA with the name and address of such individuals’ legal guardian.

3.5 The Client represents that any Plan(s) will be maintained in accordance with the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), and the Internal Revenue Code of 1986, as amended, and other applicable law. Except as set forth herein, CCA shall not be responsible for the review and payment of claims for benefits under the Plan(s) and all appeals under ERISA and other applicable law, including without limitation, with respect to claims, benefits and eligibility determinations under the Plan(s).

3.6 The Client will coordinate with any and all insurance carriers or Plan providers regarding billing reconciliation, election changes, and additions or deletions from the carrier bill regarding COBRA participants’ enrollment and cancellation for any Plan(s) offered to COBRA participants by the Client as needed. The Client acknowledges that any faxes, emails, telephone or other inquiries provided to Carriers by CCA in this regard as the COBRA Administrator are a courtesy extended by CCA and are not required. The Client acknowledges that the Client is contracted with the carriers and therefore ultimately responsible for their carrier group bill and agrees that CCA is not responsible for reconciliation of any of the carrier billing for any of the Client’s COBRA qualified plans.

3.7 The Client agrees to notify CCA, within five (5) business days of any newly enrolled participants by submitting the information through the Software. CCA is not responsible for penalties associated

with the failure to deliver a General Rights notice to new hires if the Client fails to notify in this timely fashion.

3.8 The client will provide CCA with a copy of its health insurance carrier bill(s) upon the execution of this Agreement. In addition, for census audit and billing purposes, CCA may request a copy of carrier bill(s) every 90 days.

3.9 The Client will deliver all beneficiary census information using the employee census worksheet provided by CCA, within five (5) business days of the signing of this Agreement. CCA will only accept the census information if it complies with the format stipulated in the census worksheet instruction documentation. CCA is not responsible for the completion and accuracy of the information provided.

4. **License.** CCA licenses the Software through which it provides the Services and represents that it has the ability to license such Software. The Software is protected by intellectual property laws and international intellectual property treaties. Subject to the timely payment of all Fees to CCA, and the terms and limitations set forth in this Agreement, CCA shall provide the Client with a limited, non-transferable and non-exclusive license enabling the Client to use the Software (strictly in accordance with this Agreement). The Client may use the Software, but may not otherwise modify, adapt, translate, or create derivative works based on the Software platform without the prior written consent of CCA. The Client agrees that from time to time the Software may be inaccessible or inoperable for any reason, including without limitation (a) equipment malfunctions; (b) periodic maintenance procedures or repairs which CCA may undertake from time to time; or (c) causes beyond the control of CCA or which are not foreseeable by CCA.
5. **Acknowledgements and Representations.** Each of the parties expressly acknowledges and represents to the other party as follows:

5.1 The parties have entered into this Agreement as independent contractors and not as agents of one another. Neither party shall have any authority to act in any way as the representative of the other, or to bind the other to any third party, except as specifically set forth herein.

5.2 The parties mutually represent and warrant to one another that: (a) no further approval (corporate or otherwise) from either of the parties is necessary for this Agreement to become effective, (b) each of the parties has the legal power, authority and right to enter into and perform its respective obligations under this Agreement, and (c) neither party is subject to any other oral or written agreement which prevents or otherwise prohibits the party from entering into this agreement.

5.3 CCA shall provide reasonable security provisions to ensure that third parties do not have access to Client information, including but not limited to, information respecting each Client's Plans or any participants of the Plans. Further, notwithstanding the foregoing, CCA shall be entitled to release information respecting Clients (a) to federal, state and local regulatory, or administrative, agencies or authorities in accordance with federal, state and local laws, rules and regulations, (b) to participants of Clients' Plans to whom such information pertains, or to their legal guardians or other representatives, upon written authorization from such person, (c) when otherwise compelled by subpoena, or other lawful direction or court order, and (d) to authorized agents or representatives of Clients upon request, if necessary in connection with the Clients' duties as Plan administrator.

5.4 CCA reserves the right to control the use of its name and all symbols and service marks presently existing or hereafter established with respect to CCA. The Client shall not otherwise use the name, symbols or service marks of CCA in advertising or promotional materials, or otherwise without the prior, written consent of CCA. Further, the Client shall cease any and all permitted usage of such name, symbols and/or service marks immediately following the termination of this Agreement.

5.5 The parties acknowledge that premiums or other monies received by CCA for forwarding to insurance carriers (a) are and shall remain the general assets of the Client, (b) are not the general assets of CCA, and (c) are not “plan assets” within the meaning of ERISA.

6. Exclusions.

6.1 **Illegal Acts:** No party hereto will be required to perform any act or omit any act which would be a violation of any law or regulation, unreasonably expose a party to civil liability, or which violates any code of ethical conduct.

6.2 **Benefits Advice:** CCA will not provide any benefits advice or benefits verification to COBRA participants or health care providers and will refer all such inquires to the Client.

6.3 **NSF Checks:** CCA shall not be liable for any losses to Client as a result of insufficient funds, “stop-payment” or otherwise dishonored checks, or other negotiable instruments received for premium payments, which are subsequently not paid by the maker.

6.4 **Determinations of Gross Misconduct:** CCA will not make any determinations of any nature regarding whether a qualified beneficiary’s termination from employment was due to gross misconduct.

7. **Default.** Each of the following events shall constitute a default under this Agreement, regardless of any other effect or result:

7.1 If the Client fails to pay any monies due under this Agreement within 20 days of the date due.

7.2 Other than as provided in Section 7.1 hereof, if either of the parties commits a breach of any material obligation, warranty, acknowledgement or representation of this Agreement that is not remedied within thirty (30) days after having received written notice of the breach.

7.3 Either party engages in any unethical business practice or fails to comply with any federal, state, or other government statute, rule, or regulation.

7.4. Either party, through its acts, practices, or operations, unreasonably exposes the other party to any existing or potential investigation or litigation.

7.5. Either party loses any licensure or certification required by law to perform its obligations under this Agreement.

7.6. Court appointment of a permanent receiver for all or substantially all of either party’s assets.

7.7. A general assignment for the benefit of the creditors of either party; or

7.8 The filing of a voluntary or involuntary petition of bankruptcy by either party, if such petition is not dismissed within forty-five (45) days of the date of filing, provided that an order for relief from automatic stay has been obtained, or with respect to a Chapter 11 proceeding, that the bankrupt or Bankruptcy Trustee fails to reaffirm this Agreement and provide adequate assurances pursuant to 11 U.S.C. § 365.

8. Termination.

8.1 Except as otherwise provided in Section 19 hereof, this Agreement may be terminated prior to the expiration of the Initial Term or any Renewal Terms, only in the event of a default, as described in Section 7 hereof, and only by the non-defaulting party upon five (5) business days' prior written notice to the defaulting party.

8.2 Upon any termination as a result of a default, the party not in default shall be entitled to the remedies set forth below, in addition to any other remedies to which it is entitled at law or in equity.

8.3 Without limiting any remedies of any non-defaulting party, and unless otherwise provided in this Agreement, any party not in default shall be entitled to enforce its rights under this Agreement through specific performance, injunctive relief and the recovery of all costs arising from any litigation including, but not limited to, reasonable attorneys' fees and court costs.

8.4 All of the terms and provisions of this Agreement shall survive termination to the extent that such terms and provisions are necessary to enforce the right of the party not in default.

9. **Entire Agreement.** This Agreement represents the entire agreement between the parties relating to the subject matter hereof, and supersedes all prior oral and written agreements respecting such subject matter. No provision of this Agreement may be modified, except in writing, signed by the parties.

10. **Counterparts.** This Agreement may be executed in two or more counterparts, each and all of which shall be deemed an original and all of which together shall constitute one and the same instrument.

11. Indemnification.

11.1 CCA shall indemnify, save and hold harmless the Client (its shareholders, officers, employees, and agents) from and against any and all claims, suits, actions, liabilities, losses, fines, penalties, damages and expenses of any kind (including, but not limited to, reasonable attorneys' fees) which arise out of or are based upon (a) CCA's failure to perform any of its obligations under this Agreement, and/or (b) CCA's breach of any of the acknowledgements, warranties or representations by it contained herein.

11.2 The Client shall indemnify, save and hold harmless CCA (its shareholders, officers, employees, and agents) from and against any and all claims, suits, actions, liabilities, losses, fines, penalties, damages and expenses of any kind (including, but not limited to, reasonable attorneys' fees) which arise out of or are based upon (a) Client's failure to perform any of its obligations under this Agreement, and/or (b) Client's breach of any of the acknowledgements, warranties or representations by it contained herein.

11.3 Notice of Threatened Litigation: Each party shall notify the other party within ten (10) business days of any actual threats of litigation, lawsuits or regulatory complaints or inquiries pertaining to

subject matter of this Agreement, or any inquiry made by any federal or state authority regarding the same. Failure to provide required notification shall result in a waiver of any right to indemnification under the terms of this Agreement.

12. **Limitation of Liability.** Under no circumstances shall CCA be liable to the Client or any other person for any indirect, incidental, consequential, special or punitive damages for any matter arising from or relating to this agreement, the services or the Internet generally, including, without limitation, the Client's use or inability to use the Services whether such liability is asserted on the basis of contract, tort or otherwise and even if CCA was informed of the possibility of such loss. In no event shall CCA's total liability for direct damages exceed two times the total fees paid within the proceeding twelve (12) month period, if any, by the Client for use of the Services. Some States prohibit the exclusion or limitation of incidental or consequential damages, thus this limitation of liability may not apply to the Client. CCA is not an insurer with regard to the performance of the Services. The disclaimer of warranties and the limitation of liability are a reflection of the risks assumed by the Parties in order for the Client to obtain the rights to use the Services for the specified fees. The Client agrees to assume the risk for: (i) all liabilities disclaimed by CCA contained herein; and (ii) all damages in excess of the amount, if any, of the limited remedy provided hereunder.
13. **Severability.** In the event that any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason or in any respect, such invalidity, illegality or unenforceability shall in no event affect, prejudice or disturb the validity of the remainder of this Agreement, which shall remain in full force and effect, and enforceable with its terms.
14. **Survival.** The provisions of the Recitals, Sections 11, and 20 shall survive termination of this Agreement.
15. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Pennsylvania to the extent such laws are not preempted by ERISA, HIPAA and/or other federal law.
16. **No Third Party Beneficiaries.** Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or give to any third party, any rights or remedies against any party hereto.
17. **Waiver.** No waiver of any term or provision of this Agreement, nor consent to any misperformance under or breach of this Agreement, shall be binding against either of the parties unless the party to be bound properly delivers a writing, signed by a duly authorized representative, expressly stating what has been waived or consented to. There shall be no implied waivers or consents. No waiver respecting an expressly identified term or provision, or consent to an expressly identified act or omission, will have any effect on the balance of this Agreement, or the balance of a party's conduct.
18. **Binding Nature.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives and successors.
19. **Force Majeure.** Neither of the parties shall be liable to the other for any failure to satisfy an obligation or warranty under this Agreement due to any cause beyond a party's reasonable control, including, but not limited to, inclement weather, Acts of God, war, riot, terrorist acts, malicious acts of damage, civil commotion, strike, lockout, industrial dispute, power failure or fire.



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20. **Notices.** Any notice or other communication permitted or required to be given under this Agreement shall be in writing and shall be (a) delivered in person, (b) mailed, by certified mail, return receipt requested, postage prepaid, (c) delivered by a commercial overnight courier, or (d) transmitted by facsimile, to the following:

If to CCA:

COBRA-Care Advisors, Inc.
130 East Main Street
Macungie, PA 18062
Attention: Gary Byala
Facsimile No.: (484) 661-4778

If to the Client:

Business Name _____
Business Address _____

Attention _____
Facsimile _____

IN WITNESS WHEREOF, the parties have executed this agreement on the date indicated below.

COBRA-Care Advisors, Inc.

(Client)

(Signature)

(Signature)

(Print Name)

(Print Name)

(Title)

(Title)

(Date)

(Date)